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Attorneys for Creditor
CITY NATIONAL BANK, N.A.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

A.F. EVANS COMPANY, INC.,
Debtor.

Case No. 09-41727-EDJ

Chapter 11

**APPELLEE'S COUNTER-DESIGNATION
OF ITEMS TO BE INCLUDED IN THE
RECORD ON APPEAL AND STATEMENT
OF ISSUES TO BE PRESENTED**

This Appellee's Counter-Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented arises out of the appeal by the Official Committee of Unsecured Creditors ("Committee") in the Chapter 11 case of A.F. Evans Company, Inc. ("AFE") of an order issued in favor of City National Bank, N.A. ("CNB") on CNB's motion to compel disbursement of sales proceeds of AFE property subject to CNB's pre and post-petition security interests. Appellee CNB was the pre-petition secured lender to AFE and held security interest in all personal property assets of AFE perfected by the filing of a UCC1 Financing Statement on August 9, 2004 as document 04-1000359638 (the "CNB Original Filing"). This Counter-Designation is made pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, and CNB hereby designates the following items for the record on appeal and submits its statement of the issues to be presented in connection with the Committee's Notice of Appeal

1 Order – Motion Requiring Debtor to Remit Sales Proceeds, Entered on July 9, 2009 [Docket No.
 2 202], filed on July 16, 2009.

3 **DESIGNATION OF RECORD**

4 1. Stipulation Regarding Cash Collateral and Adequate Protection [Docket No. 14],
 5 filed on March 9, 2009.

6 2. Amendment to Stipulation Regarding Cash Collateral and Adequate Protection
 7 [Docket No. 26], filed on March 10, 2009.

8 3. Order Approving Stipulation Regarding Cash Collateral and Adequate Protection
 9 on an Interim Basis [Docket No. 73], filed March 27, 2009.

10 4. Second Amendment to Stipulation Regarding Cash Collateral and Adequate
 11 Protection [Docket No. 105], filed April 16, 2009.

12 5. Order Approving Debtor's Continued Use of Cash Collateral Pursuant to Revised
 13 Second Amendment to Stipulation Regarding Cash Collateral and Adequate
 14 Protection [Docket No. 117], filed April 28, 2009

15 **STATEMENT OF ISSUES**

16 1. Did the Bankruptcy Court properly hold that the CNB Original Filing did not
 17 become “seriously misleading” under California Uniform Commercial Code section 9506(a)
 18 when, on January 28, 2009, UCC3 amendment document 0971859849, was filed to release
 19 CNB’s security interest in Westgate Housing, L.P., and UCC3 amendment document number
 20 0971859885, was filed to release CNB’s security interest in Greenery Housing Associates, LTD,
 21 when in those UCC3 amendments both the “Delete Collateral” box 8 was checked and a specific
 22 description of the Westgate and Greenery partnership interests was given, and the “Termination”
 23 box 2 was also manually checked before the UCC3 amendments were filed.

24 2. Did the Bankruptcy Court properly hold, pursuant to California Uniform
 25 Commercial Code Section 9510(a), that the UCC3 amendments filed on January 28, 2009 as
 26 records no. 0971859849 and 0971859885 were effective only to the extent required to release the
 27 “Greenery” and “Westgate” partnership interests described therein from the scope of CNB’s
 28 Original Filing.

1 3. Did the Bankruptcy Court properly hold, pursuant to California Uniform
2 Commercial Code Section 9510(a), that the scope of authority that CNB gave to amend the CNB
3 Original Filing was limited to the release therefrom of the CNB's interest in AFE's interest in the
4 "Westgate" and "Greener" partnerships.
5

6 Dated: August 5, 2009

PEPLER MASTROMONACO LLP

8 By: /S/

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